

ESTTA Tracking number: **ESTTA467293**

Filing date: **04/16/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054820
Party	Plaintiff Spirited Sorbet
Correspondence Address	LESLIE P KRAMER FAEGRE BAKER DANIELS LLP 3200 WELLS FARGO CENTER, 1700 LINCOLN STREET DENVER, CO 80203 UNITED STATES tmdnvr@faegreBD.com, lkramer@faegre.com, trademarkdnvr@faegre.com
Submission	Other Motions/Papers
Filer's Name	Louis T. Perry
Filer's e-mail	intear@bakerd.com, louis.perry@faegrebd.com
Signature	/Louis T. Perry/
Date	04/16/2012
Attachments	20120416155041 (3).pdf ( 27 pages )(2227575 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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SPIRITED SORBET, LLC

Petitioner,

v.

KARMA 4 U INC.,

Registrant.

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Mark: KARMA ICE CREAM AND  
SORBET

Reg. No.: 3,736,169

Reg. Date: January 12, 2010

Cancellation No.: 92054820

**PETITIONER'S MOTION FOR LEAVE TO FILE AMENDED  
PETITION TO CANCEL**

Petitioner Spirited Sorbet, LLC, a Colorado limited liability company ("Petitioner"), moves (this "Motion") the Trademark Trial and Appeal Board (the "Board") for an order permitting it to file an Amended Petition to Cancel pursuant to Fed.R.Civ.P. 15(a), 37 C.F.R. § 2.107, and TMBP § 507.02 to include additional grounds for cancellation of Registration No. 3,736,169, issued on January 12, 2010, for the mark KARMA ICE CREAM AND SORBET (the "'169 Registration") and identified for use in association with Cones for ice cream; Cones for icecream; Edible ices; Flavored ices; Frozen dessert consisting of fruit and cream or cream substitutes; Frozen yoghurt; Fruit ice; Fruit ice bar; Fruit ices; Ice cream; Ice cream drinks; Ice cream mixes; Ice cream sandwiches; Ice cream substitute; Ice-cream; Ice cream cakes; Iced cakes; Ices and ice creams; Italian ice; Shaved ice confections; Water ice" in International Class 030 (the "Goods"). In support of this Motion, Petitioner states:

1. Pursuant to Fed.R.Civ.P. 15(a), leave to amend shall be freely given when justice so requires. The Board liberally grants leave to amend pleadings at any stage of a proceeding

when justice requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. TBMP §507.02. See *Polaris Industries v. DC Comics*, 59 USPQ 2d 1798, 1799 (TTAB 2001) (stating same).

2. Petitioner submits that permitting it to amend its Petition to Cancel will not prejudice karma 4 us, inc. (the "Registrant") and that this Motion is timely insofar as the additional claims are based on information and evidence recently discovered.

3. Petitioner also notes that Registrant has sought three (3) separate extensions of time to answer the Petitioner's initial Petition to Cancel, and has yet to answer the same.

4. Since this Cancellation Proceeding is still in the pre-trial state, prior to any testimony having been taken and prior to any answer having been filed, the prejudice to Registrant—if it exists as at all—is minor. Leave to amend as described below should be allowed.

5. Petitioner seeks to amend its Petition to Cancel to assert a fraud claim. In reviewing the evidence, Petitioner recently discovered that the specimen the Registrant submitted to the PTO was an intentional fraud designed to deceive the Examining Attorney into believing that the KARMA ICE CREAM AND SORBET mark was in use in commerce when, in fact, it was not. Petitioner accordingly seeks to add fraud as grounds for cancellation of the '169 Registration.

6. Additionally, Petitioner seeks to replace Exhibit A of its initial Petition to Cancel with an updated printout from the PTO TARR database indicating that Petitioner's application for the mark FRUIT KARMA is a live application.

7. Petitioner attaches hereto as Exhibit 1 a copy of the Amended Petition to Cancel.

**WHEREFORE**, Petitioner respectfully requests that the Board grant this Motion and  
allow it to file the attached Amended Petition For Cancellation

FAEGRE BAKER DANIELS LLP

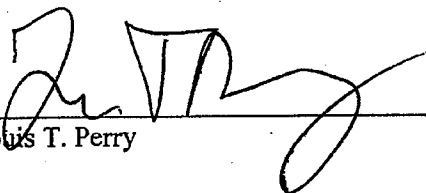
By: 

\_\_\_\_\_  
Louis T. Perry  
Michelle K. Bray  
Attorneys for Petitioner  
300 North Meridian Street  
Suite 2700  
Indianapolis, IN 46204  
317.237.0300

PROOF OF SERVICE

I hereby certify that on this date, a copy of the foregoing was served via first class US mail to counsel as follows:

karma 4 u inc.  
2875 Greenrock Trail  
Atlanta, GA 30340

  
\_\_\_\_\_  
Louis T. Perry

**EXHIBIT 1**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

---

SPIRITED SORBET, LLC

Petitioner,

v.

KARMA 4 U INC.,

Registrant.

---

Mark: KARMA ICE CREAM AND  
SORBET

Reg. No.: 3,736,169

Reg. Date: January 12, 2010

Cancellation No.: 92054820

**FIRST AMENDED  
PETITION FOR CANCELLATION.**

Spirited Sorbet, LLC ("Petitioner"), a limited liability company organized under the laws of the State of Colorado, having its principal place of business in Denver, Colorado, believes that it is or will be damaged by Registration No. 3,736,169, issued on January 12, 2010, and hereby petitions to cancel the same.

As grounds for this Petition for Cancellation, Petitioner alleges that:

1. Petitioner is the owner of the valid and subsisting U.S. Trademark Application No. 85/214,507 for FRUIT KARMA. A printout from the USPTO TARR database evidencing the status of the application is attached hereto as Exhibit A.

2. karma 4 u inc. ("Registrant") obtained a registration, under Registration No. 3,736,169, for the mark KARMA ICE CREAM AND SORBET in connection with the following goods: "Cones for ice cream; Cones for icecream; Edible ices; Flavored ices; Frozen dessert consisting of fruit and cream or cream substitutes; Frozen yoghurt; Fruit ice; Fruit ice bar; Fruit ices; Ice cream; Ice cream drinks; Ice cream mixes; Ice cream sandwiches; Ice cream substitute; Ice-cream; Ice cream cakes; Iced cakes; Ices and ice creams; Italian ice; Shaved ice

confections; Water ice" in International Class 030 (the "Goods"). On information and belief, the current address of Registrant is 2875 Greenrock Trail, Atlanta, Georgia 30340. A printout from the USPTO TARR database evidencing the status of the registration is attached hereto as Exhibit B.

3. Registrant's registration for the mark KARMA ICE CREAM AND SORBET was issued January 12, 2010. Fewer than five years have passed since the registration issued, and the registration has not become incontestable pursuant to 15 U.S.C. § 1065.

#### **Fraud**

4. Upon information and belief, the application for Registrant's mark KARMA ICE CREAM AND SORBET was void ab initio because, although filed under Section 1(a), Registrant did not use KARMA ICE CREAM AND SORBET prior to the filing date of the application.

5. Upon information and belief, Applicant engaged in fraud by (i) falsely claiming use of KARMA ICE CREAM AND SORBET in commerce in connection with the Goods with the intent to deceive the PTO and (ii) intentionally submitting a fraudulent specimen consisting of a printed piece of paper bearing the words KARMA ICE CREAM AND SORBET manually draped over a third-party container of Soy Dream-branded non-dairy frozen dessert in a manner meant to conceal the fact that the pictured product is actually that of a third party. See Exhibit C for a copy of the referenced specimen and Exhibit D for a printout of Soy Dream-branded packaging.

#### **Abandonment**

6. Petitioner believes that Registrant has abandoned the registered mark by lack of use of the mark with no intent to resume use. An investigation conducted on November 15, 2011,



via a search of the Internet with the Google search engine revealed no use of the mark (see Exhibit E). Furthermore, karma 4 u inc. was dissolved on August 20, 2011, according to the Georgia Secretary of State database (see Exhibit F). Therefore, upon information and belief, and as grounds for cancellation, it is believed that Registrant has abandoned the mark under 15 U.S.C. § 1064(3), as it is not using the registered mark in commerce and has ceased business operations.

**WHEREFORE**, Petitioner believes that it is and will be damaged by Registration No. 3736169, and prays that this registration for the mark KARMA ICE CREAM AND SORBET be cancelled in full and that this Petition for Cancellation be sustained.

FAEGRE BAKER DANIELS LLP

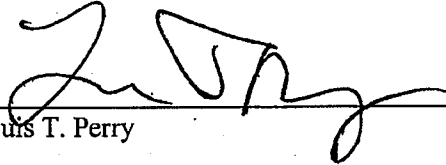
By: 

Louis T. Perry  
Michelle K. Bray  
Attorneys for Petitioner  
300 North Meridian Street  
Suite 2700  
Indianapolis, IN 46204  
317.237.0300

PROOF OF SERVICE

I hereby certify that on this date, a copy of the foregoing was served via first class US mail to counsel as follows:

karma 4 u inc.  
2875 Greenrock Trail  
Atlanta, GA 30340

  
\_\_\_\_\_  
Louis T. Perry

**EXHIBIT A**

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-04-16 09:45:13 ET

Serial Number: 85214507 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

fruit karma

(words only): FRUIT KARMA

Standard Character claim: Yes

**Current Status:** An Office action suspending further action on the application has been sent (issued) to the applicant. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

**Date of Status:** 2011-12-07

**Filing Date:** 2011-01-10

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 112

**Attorney Assigned:**  
HELLMAN ELI J

**Current Location:** M3X -TMO Law Office 112 - Examining Attorney Assigned

**Date In Location:** 2011-12-07

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Spirited Sorbet, LLC

**Address:**

Spirited Sorbet, LLC  
1080 South Clayton Way  
Denver, CO 80209  
United States

**Legal Entity Type:** Limited Liability Company

**State or Country Where Organized:** Colorado

**Phone Number:** (303) 881-3068

---

**GOODS AND/OR SERVICES**

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**International Class:** 029

**Class Status:** Active

Frozen fruit confection, made of fruit, water and cane sugar

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "FRUIT"

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**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-12-07 - Notification Of Letter Of Suspension E-Mailed

2011-12-07 - LETTER OF SUSPENSION E-MAILED

2011-12-07 - Suspension Letter Written

2011-12-07 - Teas/Email Correspondence Entered

2011-12-07 - Communication received from applicant  
2011-12-05 - Assigned To LIE  
2011-11-15 - TEAS Response to Office Action Received  
2011-11-15 - Petition To Revive-Granted  
2011-11-15 - TEAS Petition To Revive Received  
2011-10-27 - Abandonment Notice Mailed - Failure To Respond  
2011-10-27 - Abandonment - Failure To Respond Or Late Response  
2011-03-31 - Notification Of Non-Final Action E-Mailed  
2011-03-31 - Non-final action e-mailed  
2011-03-31 - Non-Final Action Written  
2011-03-29 - Assigned To Examiner  
2011-01-13 - New Application Office Supplied Data Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Leslie P. Kramer

**Correspondent**

Leslie P. Kramer

Faegre &amp; Benson LLP

1700 Lincoln Street

3200 Wells Fargo Center

DENVER, CO 80203-4532

Phone Number: 303-607-3500

Fax Number: 303-607-3600

---

**EXHIBIT B**

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-11-15 16:47:05 ET

Serial Number: 77683437 Assignment Information Trademark Document Retrieval

Registration Number: 3736169

Mark

**Karma Ice Cream and Sorbet**

(words only): KARMA ICE CREAM AND SORBET

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2010-01-12

Filing Date: 2009-03-04

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: 2010-01-12

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2010-01-12

---

LAST APPLICANT(S)/OWNER(S) OF RECORD

---



1. karma 4 u inc.

**Address:**

karma 4 u inc.  
2875 Greenrock Trail  
Atlanta, GA 30340  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Georgia

**Phone Number:** 404-551-4900

**Fax Number:** 509-931-0797

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**GOODS AND/OR SERVICES**

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**International Class:** 030

**Class Status:** Active

Cones for ice cream; Cones for icecream; Edible ices; Flavored ices; Frozen dessert consisting of fruit and cream or cream substitutes; Frozen yoghurt; Fruit ice; Fruit ice bar; Fruit ices; Ice cream; Ice cream drinks; Ice cream mixes; Ice cream sandwiches; Ice cream substitute; Ice-cream; Ice-cream cakes; Iced cakes; Ices and ice creams; Italian ice; Shaved ice confections; Water ice

**Basis:** 1(a)

**First Use Date:** 2008-01-05

**First Use in Commerce Date:** 2008-01-05

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "ICE CREAM AND SORBET"

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**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-01-12 - Registered - Principal Register

2009-10-27 - Notice Of Actual Publication E-Mailed

2009-10-27 - Published for opposition

2009-09-23 - Law Office Publication Review Completed

2009-09-23 - Assigned To LIE

2009-09-12 - Approved for Pub - Principal Register (Initial exam)

2009-09-11 - Teas/Email Correspondence Entered  
2009-09-10 - Communication received from applicant  
2009-09-10 - TEAS Response to Office Action Received  
2009-06-04 - Notification Of Non-Final Action E-Mailed  
2009-06-04 - Non-final action e-mailed  
2009-06-04 - Non-Final Action Written  
2009-05-27 - Assigned To Examiner  
2009-03-09 - New Application Office Supplied Data Entered In Tram  
2009-03-07 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

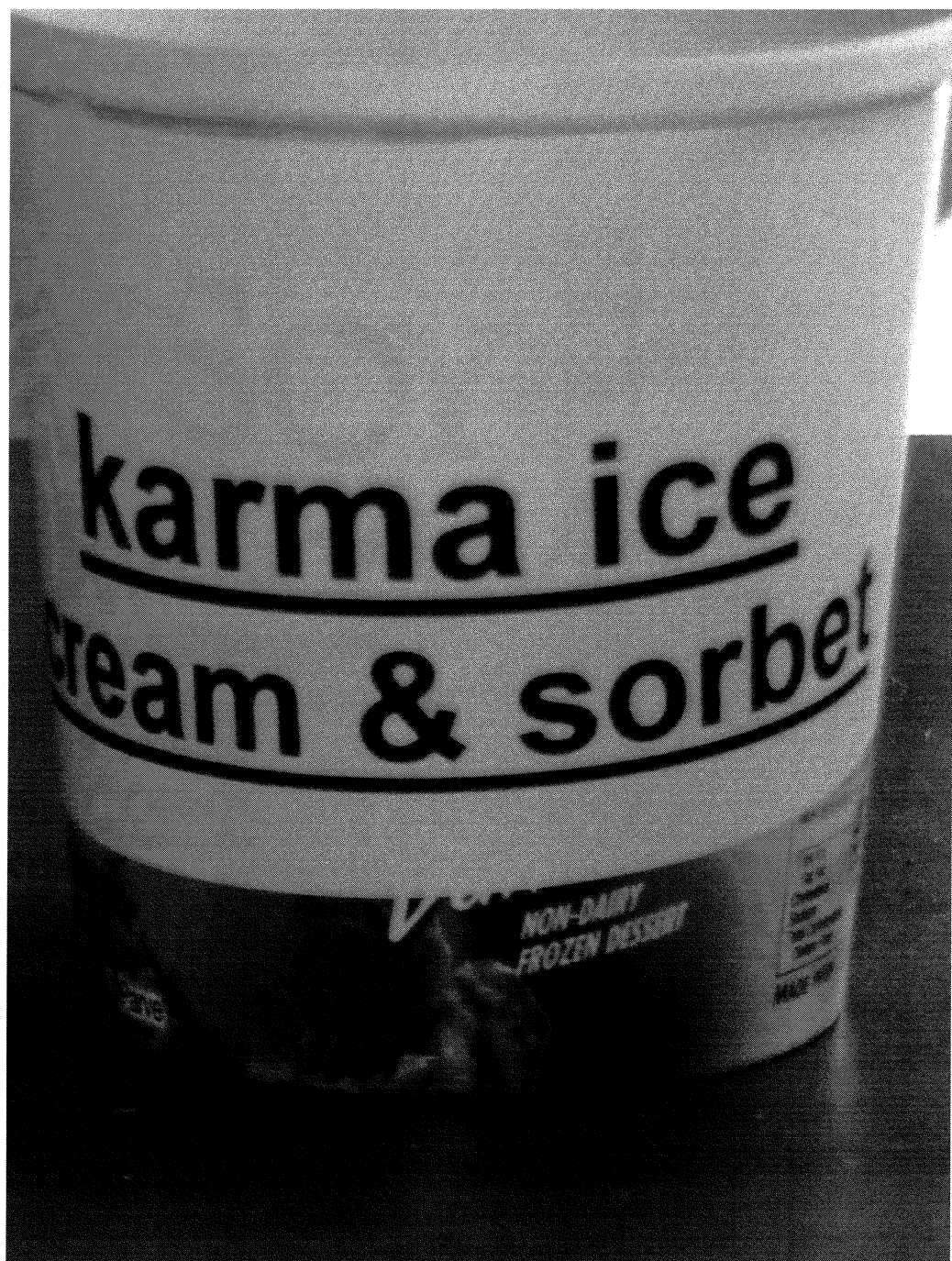
---

**Correspondent**

KARMA 4 U INC.  
KARMA 4 U INC.  
2875 GREENROCK TRL  
ATLANTA, GA 30340-5013  
Phone Number: 404-551-4900  
Fax Number: 509-931-0797

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## **EXHIBIT C**



**EXHIBIT D**

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## SOY DREAM® Non-Dairy Frozen Desserts



Taste the Dream! Made with the finest organic ingredients, like organic soybeans, **new and improved** DREAM non-dairy frozen pints, quarts and novelties are lactose free, cholesterol free and trans fat free. heavenly non-dairy alternative with the health benefits of soy.





SOY DREAM® French Vanilla Frozen Dessert



SOY DREAM® Butter Pecan Frozen Dessert



SOY DREAM® Vanilla Fudge Swirl Frozen Dessert



SOY DREAM® Vanilla Frozen Dessert



SOY DREAM® Chocolate Fudge Brownie Frozen Dessert

## SOY DREAM® Non-Dairy Frozen Novelties



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"karma ice cream and sorbet"

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Show search tools

**KARMA ICE CREAM AND SORBET - Trademarks411, Free Trademark**

**Search...**

The trademark KARMA ICE CREAM AND SORBET was filed on 2009-03-04 and assigned serial number 77683437.  
www.trademarks411.com/.../77683437-karma-ice-cream-and-sorbet - Cached - Similar

**Trademark information for KARMA ICE CREAM AND SORBET from USPTO...**

Trademark information for KARMA ICE CREAM AND SORBET, owned by karma 4 u inc...  
trademark.markify.com/trademarks/uspto/karma+ice.../77683437 - Cached - Similar

**77683437|karmaicecreamandsorb - Trademark Details**

KARMA ICE CREAM AND SORBET Socialmedia UserName, ... Mark: KARMA ICE CREAM AND SORBET. Latest Owner: KARMA 4 U Inc. 2875 Greenrock Trail Atlanta, 30340 ...  
socialmedia.trademarkia.com/.../username-karma-ice-cream-and-sorbet-77683437.htm - Cached - Similar

**sorbet - Brands and User Name on all Social Media**

KARMA ICE CREAM AND SORBET is Checking... on Facebook. UserName

Check on ...

socialmedia.trademarkia.com/.../username-search.aspx?sw...page... - Cached - Similar

**Trademarks of KARMA 4 U Inc. (2 trademarks)**

Details KARMA ICE CREAM AND SORBET. IT'S ALL ABOUT THE WATER.

DEAD (Circa ...

www.trademarkia.com/company-karma-4-u-inc-673351-page-1-2 - Cached - Similar

**KARMA ICE CREAM AND SORBET Brand - FindOwnerSearch**

KARMA ICE CREAM AND SORBET Cones for ice cream; Cones for icecream; Edible ices;

Flavored ices; Frozen dessert consisting of fruit and cream or cream ...

www.findownersearch.com/karma-ice-cream-and-sorbet-8676858-brand.html - Cached - Similar

**icecream Logo - LogosDatabase.com**

SAEC view more CHOI, Moon Hee logos. KARMA ICE CREAM AND SORBET logo -

KARMA ICE CREAM AND SORBET view more KARMA 4 U Inc. logos ...

www.logosdatabase.com/search/icecream - Cached - Similar

**Patent Publication June 23, 1965, Page 78**

Results 771 - 780 of 790 ... US 77683437 - KARMA ICE CREAM AND SORBET Karma 4 U

Inc. Corporation (January 2010) WIPO 1027395 - brandkarma Brand Karma Ip Pty ...

patent.lpeyl.com/date/19650623\_78.html - Cached - Similar

"karma ice cream and sorbet"

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**EXHIBIT F**

# Georgia Secretary of State Brian P. Kemp

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- [File Name Reservation](#)
- Online
- Online Orders
- [Register for Online](#)
- Orders
- [Order Certificate of Existence](#)
- [Order Certified Documents](#)

**View Filed****Documents**

Date: 11/15/2011

(Annual Registration  
History etc.)**Business Name History**

Name	Name Type
KARMA 4 U INC.	Current Name

**Profit Corporation - Domestic - Information**

Control No.:	07004329
Status:	Admin. Dissolved
Entity Creation Date:	1/16/2007
Dissolve Date:	8/20/2011
Jurisdiction:	GA
Principal Office Address:	2875 greenrock trail atlanta GA 30340

**Registered Agent**

Agent Name:	<a href="#">martin, john s</a>
Office Address:	2875 greenrock trail atlanta GA 30340
Agent County:	Dekalb

**Officers**

Title:	Incorporator
Name:	john s martin
Address:	2875 greenrock trail atlanta GA 30340